

In the Matter of Merchant Mariner's No. Z-208879

Issued to: JAMES BLACK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES BLACK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 December, 1952, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked Merchant Mariner's Document No. Z-208879 issued to James Black upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as utilityman on board the American SS YAQUE under authority of the document above described, on or about 28 November, 1952, while said vessel was at sea, he wrongfully had in his possession a quantity of narcotic drugs; to wit, marijuana.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by a seaman of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements. The latter stated that marijuana was found in Appellant's unlocked suitcase in the forecastle which he shared with two other seamen; but that Appellant would have disposed of the marijuana if it belonged to him because he knew about the intended search for marijuana at least an hour before it occurred.

The Investigating officer then introduced in evidence the testimony of the Chief Mate and three documentary exhibits.

In defense, Appellant offered in evidence the testimony of a fellow crew member who testified that Appellant had not gone ashore at any foreign ports. Appellant did not testify in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-208879 and all other licenses, certificates of service and documents issued to this Appellant.

From that order, this appeal has been taken, and it is urged that:

1. The evidence produced by the Investigating Officer was not sufficient to overcome the presumption of innocence which was strengthened by Appellant's prior clear record.
2. The allegations contained in the specification are not supported by the material evidence.
3. The statement that Appellant was represented by counsel is definitely incorrect.
4. The evidence affirmatively shows that Appellant was considered to be a model seaman.
5. The evidence affirmatively shows that Appellant never went ashore in a foreign port, the source of the narcotic involved; he was sober on board ship and never in a condition that would indicate use of narcotics; and there is no indication that Appellant was a peddler of narcotics.
6. Others could very easily have deposited the narcotics in the possession of Appellant.
7. The findings of the Examiner should be reversed or a rehearing should be granted.

APPEARANCES: George J. Moore, Esquire, of Mobile, Alabama, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 28 November, 1952, Appellant was serving as utilityman on board the American SS YAQUE and acting under authority of his Merchant Mariner's Document No. Z-208879 while the ship was at sea.

On this date, the Master ordered the Chief Mate to conduct a search of the steward's quarters for marijuana. About ten minutes after this order was issued to the Chief Mate in Appellant's presence, the Chief Mate commenced his search after stationing the Third Mate so as to prevent access to the stewards department quarters.

When the Chief Mate searched Appellant's belongings in his presence, the Chief Mate found

a small package of what he believed to be marijuana. This package was located in a sock in Appellant's unlocked suitcase which was on the deck and underneath a bunk. There were less than ten other pieces of clothing in the suitcase. Appellant admitted it was his suitcase but stated that he did not know how the package got there. Appellant shared his forecastle with two other members of the crew.

The Chief Mate took Appellant to the Master and gave the package to the Master; but Appellant's person was not searched. Subsequent analysis disclosed that the substance contained in the package was marijuana.

OPINION

Appellant was represented by the ship's delegate who appeared quite competent in cross-examining the Investigating Officer's only witness. There was no attempt to refute the testimony of the Chief Mate which is set forth substantially in the above findings of fact. These facts constitute substantial evidence which is sufficient to overcome the presumption of innocence and establish a prima facie case of wrongful possession of marijuana by Appellant. The testimony of the Chief Mate discloses that Appellant was present when the Master ordered the search about ten minutes before it commenced; but there is no evidence that others were warned ahead of time so that someone else might have placed the package of marijuana in Appellant's suitcase in order to get rid of it. The most probable inference is that the marijuana which was in Appellant's suitcase belonged to him.

Possession alone is sufficient to invoke the Coast Guard policy of revocation in any case where a seaman has been found guilty of a narcotics offense. Therefore, the order of the Examiner will be sustained despite Appellant's prior clear record.

ORDER

The Order of the Examiner dated at Mobile, Alabama, on 19 December, 1952, is ~~THE~~ **AFFIRMED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 19th day of June, 1953.